

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Anderson	Team: Squad #11	CCRB Case #: 201806113	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 07/29/2018 4:29 AM	Location of Incident: 10th Avenue and Sherman Avenue	Precinct: 34	18 Mo. SOL 1/29/2020	EO SOL 1/29/2020	
Date/Time CV Reported Mon, 07/30/2018 9:02 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/30/2018 9:02 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joshua Elsasser	6097	954769	034 PCT
2. SGT Hekmatulla Mukhtarzada	03383	949517	034 PCT
3. POM Kevin Falconer	2149	954790	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Keith Rodriguez	21201	959143	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Kevin Falconer	Force: Police Officer Kevin Falconer used pepper spray against § 87(2)(b)	
B.POM Kevin Falconer	Force: Police Officer Kevin Falconer used pepper spray against Individuals.	
C.SGT Hekmatulla Mukhtarzada	Abuse: Sergeant Hekmatulla Mukhtarzada refused to provide his name to § 87(2)(b)	
D.SGT Hekmatulla Mukhtarzada	Abuse: Sergeant Hekmatulla Mukhtarzada refused to provide his shield number to § 87(2)(b)	
E.SGT Hekmatulla Mukhtarzada	Abuse: Sergeant Hekmatulla Mukhtarzada interfered with § 87(2)(b)'s use of a recording device.	
F.POM Joshua Elsasser	Force: Police Officer Joshua Elsasser used physical force against § 87(2)(b)	
G.POM Joshua Elsasser	Discourtesy: Police Officer Joshua Elsasser spoke discourteously to § 87(2)(b)	

Case Summary

On Monday, July 30, 2018, § 87(2)(b) § 87(2)(b) called the CCRB to file this complaint.

On July 29, 2018, at approximately 4:29 a.m., § 87(2)(b) left Made in Mexico, located at 3950 10th Avenue in Manhattan with his brother, § 87(2)(b) and others waited for a valet to retrieve § 87(2)(b)'s vehicle. Individuals engaged in a physical altercation, to which PO Kevin Falconer of the 34th Precinct responded and discharged his Oleoresin Capsicum (OC) spray (**Allegations A and B -Force: Pepper spray**, § 87(2)(g) affecting a crowd of multiple individuals, including § 87(2)(b) § 87(2)(b).

§ 87(2)(b) walked towards a BP gas station, located at 3936 10th Avenue, and saw that officers were surrounding § 87(2)(b). § 87(2)(b) approached the officers, saw § 87(2)(b) on the ground, and asked what happened. Sgt. Hekmatulla Mukhtarzada of the 34th Precinct instructed § 87(2)(b) to leave the roadway and get onto the sidewalk. § 87(2)(b) requested Sgt. Mukhtarzada's name and shield number, and Sgt. Mukhtarzada replied that he was not required to provide the information (**Allegation C -Abuse of Authority: Refusal to provide name**, § 87(2)(g) (**Allegation D -Abuse of Authority: Refusal to provide shield number**, § 87(2)(g) and told § 87(2)(b) that he was not permitted to record video footage of the incident (**Allegation E -Abuse of Authority: Interference with recording device**, § 87(2)(g).

PO Joshua Elsasser of the 34th Precinct instructed § 87(2)(b) to leave the roadway and conducted a forcible takedown against him by grabbing hold of his body and pushing him backwards, causing him to strike his body into a nearby vehicle (**Allegation F - Force: Physical force**, § 87(2)(g). In the process of the forcible takedown, PO Elsasser said, "Now you're under arrest, dumbass" (**Allegation G -Discourtesy: Word**, § 87(2)(g). PO Elsasser lifted § 87(2)(b)'s body, pressed it onto the hood of another nearby vehicle, and then took him to ground (within Allegation F). § 87(2)(b) was handcuffed, transported to the 34th Precinct stationhouse, and released with two summonses for disorderly conduct (Board Review 01).

Body-Worn Camera (BWC) footage was received from the NYPD's Legal Bureau, and video footage was received from the § 87(2)(b) in two forms: footage recorded by § 87(2)(b) himself during the incident and footage recorded by an unidentified individual during the incident and later provided to § 87(2)(b).

Findings and Recommendations

Allegation (A) Force: Police Officer Kevin Falconer used pepper spray against § 87(2)(b)

Allegation (B) Force: Police Officer Kevin Falconer used pepper spray against individuals.

§ 87(2)(b) stated (Board Review 02) that as he was outside of Made in Mexico, a lounge located at 3950 10th Avenue in Manhattan, he experienced a burning sensation in his eyes that he thought to be the result of OC spray having been discharged, and he was later informed by officers that OC spray had been discharged, but he did not see any officer discharge OC spray during the incident.

PO Falconer stated (Board Review 03) that he performed a directed patrol outside of Playroom, a club located next to Made in Mexico, and saw a large crowd of civilians exit it shortly prior to its closing at 4:00 a.m. As PO Falconer monitored the crowd, a group of approximately five to six civilians engaged in an altercation that consisted of them swinging their

arms and legs towards each other. PO Falconer did not know if these movements made contact with others. At least one civilian was situated on the ground. After approximately five to ten seconds, because this group exhibited active aggression and posed a threat of physical harm to each other and other nearby civilians if the aggression escalated, and for no other reason, PO Falconer discharged his OC spray towards this group from approximately three to four feet away. The civilians towards which he discharged the spray “dispersed” and left the location.

Neither Sgt. Mukhtarzada (Board Review 04) nor PO Elsasser (Board Review 05) witnessed this aspect of the incident.

BWC footage recorded by PO Kevin Balsam, a portion of which is embedded below, depicts an individual to the right of the frame and wearing a white shirt and dark pants swinging his right arm towards another individual’s head. Multiple individuals quickly move to the right of the frame, and PO Balsam follows them. A female interacts with a group of approximately three males, one of whom, § 87(2)(b) (identifiable by his unique attire visible in additional footage embedded in Allegations D and E), is on the ground. Two males standing above him swing their arms downwards repeatedly.



201806113_20190118_0912_DM.mp4

An individual wearing plainclothes, who Sgt. Mukhtarzada stated was a member of Playroom’s civilian security staff, and PO Falconer both discharge Oleoresin Capsicum spray towards the group. At least one of the individuals standing above § 87(2)(b) § 87(2)(b) runs out of view after this, and PO Falconer was unable to identify them in the TRI Report that he prepared.

An officer may discharge OC spray when it is necessary to gain control of persons exhibiting active aggression or to prevent individuals from physically injuring themselves, members-of-service, or other persons. NYPD Patrol Guide, Procedure 221-07 (Board Review 06).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation (C) Abuse of Authority: Sergeant Hekmatulla Mukhtarzada refused to provide his name to § 87(2)(b)

Allegation (D) Abuse of Authority: Sergeant Hekmatulla Mukhtarzada refused to provide his shield number to § 87(2)(b)

Allegation (E) Abuse of Authority: Sergeant Hekmatulla Mukhtarzada interfered with § 87(2)(b) s use of a recording device.

§ 87(2)(b) stated that he approached his brother, § 87(2)(b) and saw that he was on the ground and that officers were nearby. § 87(2)(b) began to record footage on

his cell phone, and Sgt. Mukhtarzada stated, “You can’t do that.” § 87(2)(b) requested Sgt. Mukhtarzada’s name and shield number, and he stated that he was not required to provide this information. Sgt. Mukhtarzada stated that he was recording BWC footage, and § 87(2)(b) stated that he was also recording footage. After this, PO Elsasser ran towards § 87(2)(b)

Sgt. Mukhtarzada stated that § 87(2)(b) was approximately five to ten feet from him and walked towards him. Other officers instructed him to move away from the sidewalk where they were, which he refused to do. Sgt. Mukhtarzada instructed § 87(2)(b) to move backwards, and § 87(2)(b) § 87(2)(b) informed him once or twice that he would record the incident, and a female also said the same. Sgt. Mukhtarzada informed § 87(2)(b) § 87(2)(b) that he was permitted to record the incident and instructed him to do so after taking a step backwards. § 87(2)(b) § 87(2)(b) repeated that he would record.

During his interaction with § 87(2)(b) § 87(2)(b) which lasted approximately 15 to 30 seconds, Sgt. Mukhtarzada did not recall § 87(2)(b) § 87(2)(b) requesting his name or shield number, saying anything to him or other officers regarding names or shield numbers, or saying anything to Sgt. Mukhtarzada or other officers about “numbers.”

PO Elsasser stated that Sgt. Mukhtarzada was approximately six to seven feet away from him when he instructed § 87(2)(b) to move out of the roadway and informed him that he was permitted to “record.” PO Elsasser did not hear Sgt. Mukhtarzada tell § 87(2)(b) that he could not record. PO Elsasser neither heard § 87(2)(b) request Sgt. Mukhtarzada’s name or shield number nor Sgt. Mukhtarzada providing such information.

The video footage embedded below represents the entirety of the footage recorded by § 87(2)(b) in the incident and the entirety of the interaction he alleged with Sgt. Mukhtarzada. § 87(2)(b) asks, at the outset, what the officers are doing. Sgt. Mukhtarzada hold a Conducted Electricity Weapon (CEW) and looks at him. When they begin interacting with each other, Sgt. Mukhtarzada instructs § 87(2)(b) to “get out of the street.” § 87(2)(b) asks what happened to an arrested individual, and Sgt. Mukhtarzada informs him that an individual assaulted someone, which § 87(2)(b) refutes. Sgt. Mukhtarzada continues to issue instructions to § 87(2)(b) who points his camera towards Sgt. Mukhtarzada’s name plate and shield and says, “Get your badge. Get your number” and repeatedly tells officers not to touch him.

As a female steps between Sgt. Mukhtarzada and § 87(2)(b) says, “What’s your number?” and the female says, “He can record.” Sgt. Mukhtarzada places an open palm in front of him and makes a statement that appears to be, “He can.” The female says, “He can,” and § 87(2)(b) says, “Yes, I can. You got your body camera just like I got my body camera.”



201806113_20180802_1605A_DM.MOV

PO Falconer did not see any interaction between Sgt. Mukhtarzada and § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (F) Force: Police Officer Joshua Elsasser used physical force against § 87(2)(b)

Allegation (G) Discourtesy: Police Officer Joshua Elsasser spoke discourteously to § 87(2)(b)

It is undisputed that PO Elsasser conducted a forcible takedown against § 87(2)(b)

PO Elsasser stated that after § 87(2)(b) refused to comply with both his and Sgt. Mukhtarzada's commands to leave the roadway and move to a sidewalk, he determined that he would arrest § 87(2)(b) if he continued to be non-compliant with these commands and issued the ultimatum of, "Go to the sidewalk. Go to jail." Other than issuing commands and providing an ultimatum for non-compliance, PO Elsasser did not perform any other actions designed to de-escalate the interaction and did not do so because § 87(2)(b) had been guilty of a crime by remaining in the roadway, he had provided him with the option to cease the offence, § 87(2)(b) failed to comply, PO Elsasser informed him that his non-compliance would result in arrest, and § 87(2)(b) § 87(2)(b) began to move away.

PO Elsasser turned and walked away from § 87(2)(b) A female yelling caused him to turn back, and § 87(2)(b) § 87(2)(b) was approximately three to five feet away from and

walking directly towards PO Elsasser, saying nothing. Because § 87(2)(b) had refused to comply with PO Elsasser's commands, PO Elsasser did not attempt additional de-escalation and determined that he would both arrest § 87(2)(b) and perform a forcible takedown against him. PO Elsasser attempted to grab hold of one of § 87(2)(b)'s arms and then wrapped both of his arms around § 87(2)(b)'s body. PO Elsasser and § 87(2)(b) struck a vehicle and fell to the ground. No officer assisted in this process. PO Aidan Caine assisted in handcuffing § 87(2)(b) after he was on the ground.

Video footage, a portion of which is embedded below, depicts PO Elsasser's forcible takedown and the events leading to it from the perspective of PO Elsasser's BWC (left) and from a third party viewing the interaction in profile (right). After making initial contact with § 87(2)(b) the BWC footage captures PO Elsasser saying, "Now you're going to jail, dumbass."



Elsasser.mp4



201806113_20180802_1605_DM.MOV

An officer must use no more than the force necessary to gain control or compliance and must employ de-escalation techniques when applicable. NYPD Patrol Guide, Procedure 221-01 (Board Review 07). An officer must be courteous and respectful when dealing with members of the general public. NYPD Patrol Guide, Procedure 203-09 (Board Review 08).

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

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- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 09).
- PO Falconer has been a member-of-service for five years and is a subject in no prior and one other open CCRB complaint.
- Sgt. Mukhtarzada has been a member-of-service for eight years and has been a subject in five CCRB complaints and seven allegations, none of which were substantiated. § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- PO Elsasser has been a member-of-service for five years, and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of January 25, 2019, § 87(2)(b) has not filed a Notice of Claim with the New York City Office of the Comptroller (Board Review 10).
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)
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Squad No.: _____

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
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Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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